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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DANIEL BANALES,

Petitioner,

v.

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES,

Respondent;

AT&T WIRELESS SERVICES, INC.,

Real Party in Interest.

B177019

(Los Angeles County
Super. Ct. No. BC312007)

ORIGINAL PROCEEDING in mandate. Edward A. Ferns, Judge. Petition granted.

Jones, Bell, Abbott, Fleming & Fitzgerald, Fredrick A. Rafeedie, Trenton J. Hill, and William M. Turner for Petitioner.

No appearance for Respondent.

Kirkpatrick & Lockart and Michael L. Mallow for Real Party in Interest.

INTRODUCTION

Daniel Banales has petitioned the court for a writ of mandate directing the trial court to vacate its order granting a motion to strike allegations in his complaint relating to his cause of action under Business and Professions Code section 17200 (referred to as the Unfair Competition Law (UCL)).¹ Believing Banales's request for restitution on behalf of the general public was unauthorized, the trial court struck the restitution allegations. Because the trial court erred in doing so, we grant the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Daniel Banales filed an action against AT&T Wireless Services, Inc. (AT&T), under the UCL and the false advertising law (§ 17500 et seq.). He filed the action on behalf of the general public as a private attorney general. Banales alleged, among other things, that AT&T had failed to disclose a \$15 upgrade processing fee for customers electing to purchase a new mobile phone. He requested disgorgement and restitution of the \$15 fee, as well as injunctive relief.

AT&T moved to strike the allegations requesting restitution and disgorgement of the allegedly improper upgrade fees. AT&T argued, among other things, that Banales had no interest in the money he sought to recover because he had not alleged he was an AT&T customer. Thus, restitution was not an authorized remedy. Banales opposed the motion, arguing that under section 17204 and controlling case law any person may sue in a representative capacity and seek the remedies authorized under the UCL, including restitution.

Citing *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116 (*Kraus*) and *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163 (*Cortez*), the trial court granted the motion. The court stated, "[I]n unfair business

¹ All Code references are to the Business and Professions Code, unless otherwise indicated.

practice cases which are not certified as class actions, a court may not award restitution on behalf of unidentified persons.”² In so ruling, the trial court clearly erred because, as we will discuss, the UCL permits a private plaintiff who has suffered no injury at all to sue to obtain relief for others, including restitution.

Banales filed a petition for writ of mandate challenging the trial court’s ruling. We issued an order indicating our intention to grant the petition and issue a peremptory writ of mandate in the first instance. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232; see also *Liberty Mutual Ins. Co. v. Superior Court* (1992) 10 Cal.App.4th 1282, 1290.) We allowed further briefing and now grant the petition.

DISCUSSION

Business and Professions Code section 17204 provides, “*Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel . . . or any city attorney of a city, or city and county . . . in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.*” (Italics added.)

Furthermore, section 17203 provides, in pertinent part, “The court may make such orders or judgments, including the appointment of a receiver, as may

² AT&T had also argued in its motion to strike that Banales’s claim for restitution on behalf of AT&T customers was improper because all such customers were subject to an arbitration agreement requiring claims of improper fees to be asserted in arbitration. The trial court ruled this aspect of AT&T’s motion involved factual issues that could not be resolved with a motion dealing with the pleadings. The court did not, however, preclude AT&T from raising that issue in

be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.”

Under section 17204, any person may bring an action for unfair competition or unlawful, unfair, or fraudulent business practices on behalf of the general public, and one need not bring such an action on one’s own behalf to have standing to sue. (*Hernandez v. Atlantic Finance Co.* (1980) 105 Cal.App.3d 65, 71-72; *Massachusetts Mutual Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1290, fn. 3 (*Massachusetts Mutual*); *Rosenbluth Internat., Inc. v. Superior Court* (2002) 101 Cal.App.4th 1073, 1076-1077 (*Rosenbluth*).)

Thus, in *Massachusetts Mutual*, the court stated, “[A] representative action under the UCL is different from a class action. In a representative action under Business and Professions Code section 17204 a private plaintiff is permitted to pursue the injunctive and restitution relief provided by the UCL on behalf of the public without showing that he was directly harmed by the defendant's business practices. [Citation.] In a class action a plaintiff sues on his own behalf as well as on behalf of members of the class and the class must be certified under the provisions of Code of Civil Procedure section 382. [Citation.]” (97 Cal.App.4th at p. 1290, fn. 3.)

In *Rosenbluth*, the court stated, “The UCL permits ‘any person acting for the interests of itself, its members or the general public’ (§ 17204) to file an action for restitution and/or injunctive relief (§ 17203) against a person or business entity alleged to be engaged in any ‘unlawful, unfair or fraudulent business act or practice’ (§ 17200) As interpreted by our Supreme Court, the UCL allows a private plaintiff who himself has suffered no injury to file a lawsuit under the UCL

the future with a proper motion. Accordingly, we do not decide this aspect of AT&T’s motion to strike.

in order to obtain relief for others. [Citation.] . . . [¶] . . . Where the UCL action is based on a contract, the representative plaintiff may seek to vindicate the rights of individual consumers who are parties to the contract.” (*Rosenbluth, supra*, 101 Cal.App.4th at pp. 1076-1077; see also *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 532 [“the rule that restitution under the UCL may be ordered without individualized proof of harm is well settled”].)

Furthermore, the court in *Kraus* stated: “Both consumer class actions and representative UCL actions serve important roles in the enforcement of consumers' rights. Class actions and representative UCL actions make it economically feasible to sue when individual claims are too small to justify the expense of litigation, and thereby encourage attorneys to undertake private enforcement actions. Through the UCL a plaintiff may obtain restitution and/or injunctive relief against unfair or unlawful practices in order to protect the public and restore to the parties in interest money or property taken by means of unfair competition. These actions supplement the efforts of law enforcement and regulatory agencies. This court has repeatedly recognized the importance of these private enforcement efforts. [Citations.]” (*Kraus, supra*, 23 Cal.4th at p. 126; see also *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1145 [“disgorgement of money obtained through an unfair business practice is an available remedy in a representative action only to the extent it constitutes restitution”].)

Accordingly, it is clear that sections 17203 and 17204 confer standing to prosecute actions for relief not only on the public officials named therein, but also on private individuals, and a private plaintiff who has suffered no injury may sue to obtain injunctive relief for others. (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 561.) Our Supreme Court has stated, “[P]ursuant to section 17200 as construed by this court and the Courts of Appeal, ‘a private plaintiff who has himself suffered no injury at all may sue to obtain relief for others.’ [Citations.] That the Legislature in section 17204 used the disjunctive

when listing the entities empowered to bring UCL “[a]ctions for . . . relief” plainly suggests it meant to designate such entities in the alternative.” (*Ibid.*)

Contrary to the trial court’s ruling, *Kraus* and *Cortez* do not change the above conclusion. In *Kraus*, the court confronted the question of whether a trial court may order restitution under the UCL into a fluid recovery fund. (*Kraus, supra*, 23 Cal.4th at p. 121.) The court construed section 17203 and concluded that disgorgement into such a fund was not a remedy authorized by the statute. In *Cortez*, the court held that while disgorgement into a fluid recovery fund of all profit the defendant earned by withholding overtime wages was not permitted, the defendant could be compelled to restore unpaid wages to its employees and former employees. (*Cortez, supra*, 23 Cal.4th at p. 168.) Neither case addressed the settled issue that section 17204 confers standing on private individuals who have suffered no injury to sue to obtain injunctive relief and restitution for others.

As Banales alleged in his complaint, his action was brought “as a private attorney general on behalf of the general public” and seeks “an order requiring [AT&T] to restore all monies that [AT&T] acquired from any person as a result of their false advertising, and unfair, unlawful and fraudulent business acts and practices.” He did not allege he was an AT&T customer or that he was suing in an individual capacity. He clearly is suing solely in a representative capacity. But the fact Banales may not individually be entitled to restitution does not mean his allegations regarding restitution are improper. The allegations are proper for the very reason that he is suing in a representative capacity, which sections 17203 and 17204 clearly allow.

DISPOSITION

The petition is granted. Let a peremptory writ of mandate issue, directing the trial court to: (1) vacate its order of July 22, 2204, striking Banales’s

allegations requesting restitution, and instead (2) issue a new order denying the motion to strike those allegations.

Banales is to recover his costs in this writ proceeding.

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COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.